

# U.S. Fish and Wildlife Service Pacific Southwest Region

## Renewable Energy Scoping Meeting

March 12, 2009

Sacramento, CA

March 17, 2009

Palm Springs, CA

# Mission and Regulatory Mandate of the U.S. Fish and Wildlife Service

- Mission: Working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.
- Endangered Species Act: provides a means for conserving the ecosystems upon which endangered and threatened species depend and a program for the conservation of such species.



# Key ESA Regulations

## Sections 7 and 10

- Section 7: Actions funded, authorized, or carried out by a Federal agency
- Section 10: Nonfederal actions
- Differences: Time, money, project scope, assurances





# The "Take" Concept

- Take: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.
- Must be incidental
- Harm: Habitat modification resulting in death or injury by impairing breeding, feeding, sheltering behavior
- Harass: Actions creating a likelihood of injury by disrupting breeding, feeding, sheltering behaviors



# Section 7 Trigger (old regs)

- May Affect: When a proposed action poses any effect on listed species or critical habitat.
- If Not Likely to Adversely Affect: Concurrence Letter
- If Adverse Affect: Biological Opinion





# Section 7 Trigger (new regs)

- May Affect: When a proposed action poses any effect on listed species or critical habitat.
  - Not Applicable: No take, AND
    - No effect on listed species or critical habitat, OR
    - Effects are from global processes meeting certain criteria:
- Same as former "Not likely to Adversely Affect" Determination
- Can't be reliably predicted at species range scale
  - Impacts are small and insignificant
  - Potential risk of harm is remote, OR
- Effects are not capable of being measured meaningfully or the effects are wholly beneficial.



# Section 10 Trigger

- Non-Federal Actions
- Incidental Take occurs





# FWS Permitting Process

## Section 7 Consultation

- Begins with early coordination when requested by agency
- Project cannot jeopardize a species or adversely modify critical habitat
- Action agency must submit a Biological Assessment:
  - Description of the action
  - Description of the action area
  - Description of any listed species or critical habitat
  - Description of how the action may affect any listed species or critical habitat and an analysis of any cumulative effects
  - Any other relevant available information/reports on the action, the affected listed species, or critical habitat
- Product: a Biological Opinion with Incidental Take Statement





# FWS Permitting Process

## Section 10 Permitting

- Applicant must develop a Habitat Conservation Plan
  - Minimize and Mitigate to maximum extent practicable
  - Cannot Jeopardize or Adversely Modify
  - Take must be incidental
  - Internal Section 7 consultation
- Applicant must assure funding for life of Plan
- NEPA must be done
- Long term monitoring and adaptive Management
- No surprises



# FWS Permitting Timeline

## Section 7

- Regulatory Timeframe: 135 days
- Reality is sometimes longer

## Section 10

- Low Effect HCPs (NEPA CAT-EX): 3-5 years
- Standard HCPs (NEPA EA, EIS): 6-9 years



# Major Factors that Affect Permitting Timeline

- Existing workload
- Early planning/project scheduling
- Poor Biological Assessment
  - Insufficient information about PD
  - Biological surveys should be coordinated with FWS before they occur
  - Insufficient analysis of effects
- Changes in Project Description delays time frames





# Facilitating the Permit Process

- Pre-filing meetings
- Developing guidelines
- Hiring a regional energy coordinator
- Supplementing staff
- Developing Best Management Practices (BMPs)
- Exploring alternative procedural methods for consultations



# Suggestions for Better Inter-agency Coordination

- Know your agency counterparts
- Work at lower levels
- Initiate consultation no earlier than the CEC's Preliminary Staff Assessment and when draft PEIS goes out for public comment
- Produce FWS data needs document that CEC and CPUC can ensure that applicants follow early on

